

STATE OF MICHIGAN
COURT OF APPEALS

A & J PROPERTIES, LLC,

Plaintiff-Appellant,

v

TOU H. YANG and LONG KUE, d/b/a VALUE
TOWN DOLLAR STORE,

Defendants/Cross-Plaintiffs-
Appellees,

and

MORRIS McQUEEN,

Defendant/Cross-Defendant/
Cross-Plaintiff-Appellee,

and

WANDA COATES and COATES ENTERPRISES,
INC, d/b/a DOLLAR PLUS SUPERSTORES

Defendants/Cross-Defendants-
Appellees.

Before: Saad, P.J., Jansen and Markey, JJ.

PER CURIAM.

I. Facts and Proceedings to Date

Plaintiff appeals from the trial court's order granting motions for summary disposition filed by defendants Tou H. Yang, Long Kue and Morris McQueen. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This contract dispute involves a commercial lease. Plaintiff is the owner of real property in Warren. Yang and Kue, doing business as Value Town Dollar Store, entered into a five-year

lease agreement with plaintiff. Thereafter, they assigned their lease interest to McQueen. Plaintiff did not sign this assignment agreement. However, at the same time, plaintiff, Yang, and Kue signed a lease addendum, adding McQueen to the lease as an additional tenant. Also, Yang and plaintiff signed a “partial agreement” allowing plaintiff to hold the initial security deposit given by Yang and Kue. Subsequently, defendants Wanda Coates and Coates Enterprises, Inc., doing business as Dollar Plus Superstores, occupied the property. Plaintiff maintains that it did not enter into a formal written agreement with Coates, but says that it was aware of Coates’ occupation of the premises and accepted rental checks from her.

Coates became deficient in her rental payments, and owed plaintiff approximately \$18,000. Plaintiff’s representative advised Coates that, unless the payment of rent was made, he would have no other choice but to evict her from the property. She responded that she planned to vacate the property, and soon thereafter did so. Plaintiff attempted to find another tenant, but did not rent the property until several months later.

Plaintiff sued all defendants in district court under theories of breach of contract and unjust enrichment. The case was reassigned to circuit court after plaintiff maintained that it continued to accrue damages due to defendants’ ongoing failure to pay rent. Following a number of cross and counter-complaints between defendants, Yang, Kue, and McQueen moved for summary disposition pursuant to MCR 2.116(C)(8) and (10) regarding plaintiff’s claims. They maintained that under the lease provisions, plaintiff was prevented from pursuing remedies for non-payment of rent because the tenants vacated the property. Plaintiff responded that it was entitled to recover rents under the lease because it never terminated the lease. The trial court granted defendants’ motions for summary disposition, and held that plaintiff was not entitled to future rents in the absence of specific language in the lease agreement, and that plaintiff was not entitled to damages representing Coates’ lease arrearages and other monies owed for nonpayment of taxes and utilities. The trial court determined that, under ¶ 16 of the agreement, plaintiff’s sole remedy on default was to terminate the lease agreement and order the tenant to vacate. If the tenant then refused to surrender the property, plaintiff could pursue other remedies. If, however, the tenant vacated, plaintiff was entitled only to possession. The trial court reasoned that because Coates vacated the property, no back rent was owed plaintiff.

II. Analysis

We reverse the trial court's September 21, 2004 order that granted summary disposition to defendants Yang, Kue and McQueen because the court's decision is premature and because there are genuine issues of material fact to be decided.

Plaintiff should be allowed to introduce testimony regarding the parties' understanding of the rental obligations and remedies contained in the original lease between A&J Properties and Messrs. Yang and Kue. Moreover, there are also issues of fact regarding the parties' agreement concerning the assignment of the lease to McQueen. From the scant record before us, it remains unclear whether the assignment maintained Yang's and Kue's rental obligation, or relieved Yang and Kue of their obligation to pay rent under the original lease. Furthermore, it is also unclear from the record whether paragraph 16 of the lease contains all the remedies available to plaintiff. Indeed, it would appear that the lease and Michigan law affords plaintiff alternative remedies.

Additionally, plaintiff is entitled to make a record concerning the rent owed prior to Coates' vacation of premises and the damages it says it incurred subsequent to Coates' vacation of the premises while it made efforts to rent the premises.

It also appears from the record that Coates was neither the original lessee/tenant, nor was Coates an assignee of Yang or Kue. Rather, McQueen was an assignee of the original lease and Coates simply occupied the premises without a lease. Because Yang and Kue are the original lessees and McQueen, the assignee, it is unclear what continuing obligations Yang and Kue or McQueen, may have had under the lease and the assignment of the lease, and what impact, if any, Coates' alleged default and vacation of the leased premises had with respect to these obligations.

For the foregoing reasons, in order to allow plaintiff an opportunity to introduce evidence on these issues and because there are material issues of fact, we reverse and remand to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey